IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5710 OF 2004

Sonai Krushi Prakriya Karkhana Limited)
and others.).. Petitioners

Versus

The State of Maharashtra and others).. Respondents

Mr.S.G.Aney, Senior Counsel, with Mr.M.L.Patil, Advocate, for the Petitioners.

Mr.A.A.Kumbhakoni, Counsel, with Mr.N.P.Deshpande, A.G.P., for Respondent Nos.1 to 3.

Mr.C.J.Sawant, Senior Counsel, with Ms.Poonam Bhosale for Respondent No.4.

CORAM: H.L. GOKHALE AND SMT.NISHITA MHATRE, JJ.

DATED: 22ND SEPTEMBER 2004

P.C.:

1. Heard Mr.Aney, Senior Advocate with Mr.Patil for the Petitioners. Mr.Kumbhakoni appears for Respondent Nos.1 to 3 and Mr.C.J.Sawant, Senior Advocate, with Ms.Bhosale for Respondent No.4.

2. This Petition has already been admitted on 12th July 2004. On that very date Rule was issued as to interim relief which was made returnable after two weeks. Respondent No.4 herein moved a Civil Application bearing No.1907 of 2004 for joining into this proceeding. That application was granted by this Bench by order passed on 20th September 2004 and that is how Respondent No.4 has

also been joined in the present proceeding.

3. Mr.Kumbhakoni and Mr.Sawant, learned Counsel appearing for the Respondents are agreeable to the Petition itself being disposed of without filing any further replies. One reply is already filed by Mr.Sankhe, Section Officer of the Co-operation Department, affirmed on 20th September 2004. Civil Application filed by Respondent No.4 and the contentions raised therein are treated as the reply of the Respondent No.4 to the main Petition.

4. Mr.Aney, learned Counsel appearing for the Petitioners, has raised various submissions, though the principal submission has been that the permission to establish the jaggery unit at Village Varkute dated 25th February 2004 given by the State Government has been cancelled by the impugned order dated 8th June 2004 without giving any opportunity of being heard to the Petitioners. Mr.Kumbhakoni, learned Counsel appearing for Respondent Nos.1 to 3, has defended the impugned order again by raising various submissions. He has however fairly stated that the Petitioners have not been afforded a hearing before the impugned order was passed. He has therefore instructions to leave it to the Court to pass appropriate order. Mr.Sawant, learned Counsel appearing for Respondent No.4, has also no objection to

the impugned order being interfered only on this ground provided Respondent No.4 is also permitted to appear in the subsequent proceeding in case the State Government is inclined to cancel the permission dated 25th February 2004.

5. Mr.Kumbhakoni has stated on instructions that the Government is inclined to cancel the earlier permission dated 25th February 2004. He therefore states that an appropriate show cause notice will be given to the Petitioners. He makes a request to Mr.Aney that some representative of the Petitioners may attend the office of the Secretary, Co-operation Department on 6th October 2004 to collect the show cause notice. Mr.Aney on instructions is agreeable to send a representative to collect the show cause notice. Mr.Aney states that a reply to the notice will be filed on or before 15th October 2004.

6. Mr.Kumbhakoni had proposed that the hearing into the show cause notice will be held by the Secretary, Co-operation and Marketing. Mr.Aney points out that one Mr.Harshavardhan Patil, who is the Minister of this particular Department, is the Chairman of Nira Bhima Cooperative Sugar Factory Limited which is also an objector apart from Respondent No.4 herein. He, therefore, makes a request that the proposed hearing into

the show cause notice be held by another officer of the Secretary rank. Mr.Kumbhakoni is agreeable to this request.

7. In the circumstances, having heard all the Counsel, we set aside the impugned order dated 8th June 2004 principally on the ground that the Petitioners were not heard when the impugned order was passed. As stated above, the State Government is proposing to give a notice to show cause as to why permission dated 25th February 2004 be not cancelled. The representative of the first Petitioner Karkhana will collect the show cause notice on 6th October 2004 by attending the office of the Secretary, Co-operation. The Petitioners will file their reply on or before 15th October 2004. In the meanwhile, the Chief Secretary of the Government of Maharashtra will nominate any other Secretary of the IAS rank to hear and decide the show cause notice. The office of the concerned Secretary will send a notice to the Petitioners as well as to Respondent No.4 and Nira Bhima Cooperative Sugar Factory Limited for attending before the Secretary to hear and decide the show cause notice.

8. The Secretary concerned will decide the show cause notice as expeditiously as possible after affording full opportunity to all the parties to make their representations and will pass a reasoned order preferably

within six weeks from the pleadings being completed.

9. Mr.Aney makes a request that in the event the final order is against the Petitioners that may not be made operational for some reasonable time. Mr.Kumbhakoni and Mr.Sawant oppose this request though ultimately they leave it to the Court to pass appropriate order. In the facts of the present case, we therefore direct that the impugned order, if adverse to the Petitioners, will not be brought into force for a period of two weeks from the date on which the order is served on the Petitioners.

10. Rule made absolute as above.

11. All parties to act on the authenticated copy of this order.

(H.L. GOKHALE, J.)

(SMT.NISHITA MHATRE, J.)